

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE CELGENE CORPORATION
SECURITIES LITIGATION

Case No. 2:18-cv-04772 (JMV) (JBC)

CLASS ACTION

**PROPOSED FINDINGS OF
FACT, CONCLUSIONS OF LAW,
AND ORDER GRANTING
UNOPPOSED MOTION TO
SEAL PORTIONS OF LEAD
PLAINTIFF'S MEMORANDUM
OF LAW IN OPPOSITION TO
DEFENDANTS' APPEAL FROM
THE MAGISTRATE JUDGE'S
FEBRUARY 24, 2022 LETTER
ORDER PURSUANT TO LOCAL
CIVIL RULE 5.3**

Upon consideration of Plaintiff AMF Pensionsförsäkring AB's ("Plaintiff") Unopposed Motion to Seal Portions of Lead Plaintiff's Memorandum of Law in Opposition to Defendants' Appeal from the Magistrate Judge's February 24, 2022 Letter Order Granting Lead Plaintiff Leave to File a Third Amended Complaint (ECF No. 190) Pursuant to Local Civil Rule 5.3 ("Motion"), including the specific material for which sealing is requested identified in the Index annexed as Exhibit 1 to Plaintiff's Notice of Unopposed Motion to Seal Portions of Lead Plaintiff's Opposition to Defendants' Appeal Pursuant to Local Civil Rule 5.3;

This Court having fully considered the submissions of the parties and the Declaration of James E. Cecchi filed in support of the Motion, which avers that the Motion is uncontested; and

The Court having further found that the standards of Local Civil Rule 5.3(c)(3) have been met and support the sealing, and for good cause shown:

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED**.

2. Plaintiff shall file on the public docket a redacted version of its Memorandum of Law in Opposition to Defendants' Appeal from the Magistrate Judge's February 24, 2022 Letter Order Granting Lead Plaintiff Leave to file a Third Amended Complaint (ECF No. 190) ("Plaintiff's Opposition Brief"), containing only those redactions as identified in the Index filed as Exhibit 1 to the Motion.

The following Findings of Fact and Conclusions of Law are made in support of this Order:

1. Plaintiff's Opposition Brief references confidential information produced by the U.S. Food and Drug Administration ("FDA") concerning Celgene's New Drug Application ("NDA") for Ozanimod.

2. There is a common law presumption of a public right of access to judicial proceedings and records. *See In re Cendant Corp.*, 260 F.3d 183, 192 (3d Cir. 2002). "The right of public access, however, is not absolute and the presumption of access may be

rebutted.” *Cuadra v. Univision Cmmc’ns, Inc.*, 2012 WL 1150833, at *11 (D.N.J. Apr. 4, 2012).

3. The Parties request sealing of information contained in documents produced by the FDA in response to Plaintiff’s document subpoena. These materials include information protected from disclosure by Trade Secrets Act, 18 U.S.C. § 1905, The Federal Food, Drug, and Cosmetics Act, 21 U.S.C. § 331(j), and/or FDA regulations governing the disclosure of trade secrets or commercially sensitive information, 21 C.F.R § 20.61. Public release of certain information about Celgene’s drug development process could be detrimental to Celgene’s competitive business activities and provide business advantages to those with whom Celgene does business or those who compete with Celgene. *See Cima Labs, Inc. v. Actavis Group HF*, 2007 WL 1672229, at *5 (D.N.J. June 7, 2007).

4. In making this determination, I have considered that publicly releasing the information sought to be sealed would serve no legitimate purpose, would implicate no matter important to public health or safety, would not promote fairness or efficiency, and would not serve to shield a public entity or figure from inquiry. *See Glenmede Trust Co. v. Thompson*, 56 F.3d 476, 483 (3d Cir. 1995).

5. I previously ordered that the material identified in Exhibit 1 remain under seal. *See Findings of Fact, Conclusions of Law, and Order Granting Unopposed Motion to Seal Portions of Motion For Leave to Amend Papers* (ECF No. 176).

6. Celgene and the other Defendants do not oppose Plaintiff's requests to seal.

7. The redactions to Plaintiff's Opposition Brief the Third Amended Consolidated Class Action Complaint are minimal and obscure only such information as is necessary to avoid disclosure of proprietary and commercially sensitive business information.

8. There is no reasonable, less restrictive alternative to the redactions ordered.

9. The Motion is granted and the information identified in the Index filed as Exhibit 1 to the Motion is hereby ordered SEALED.

10. Plaintiff is directed to file a public version of Plaintiff's Opposition Brief conforming with this Order (except to the extent that the existing public version already conforms with this Order) no later than seven days from the date of this Order.

The Clerk of the Court is directed to terminate the motion at ECF No. ____.

SO ORDERED.

Dated: _____

JAMES B. CLARK, III
United States Magistrate Judge